

### **Remarks**

Claims 1-16 and 18-49 were pending in this application. Claims 1, 12-13, 24, and 27 have been amended, claims 10-11 have been canceled without prejudice, and no claims have been added. Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks.

#### **Rejection of Claims 1-9, 14-16, 18-23, and 34-36 Under 35 U.S.C. § 102(b) over Fordon**

Claims 1-9, 14-16, 18-23 (*now claims 18-22*), and 34-36 (*now claims 33-35*) have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,395,542 issued to Fordon ("Fordon"). With reference to claim 1, Applicant has amended this claim to recite "a first pair of opposed walls pivotably attached to the peripheral frame portion and movable between an assembled position and an inwardly collapsed position" and "a second pair of opposed walls pivotably attached to the peripheral frame portion and movable between an assembled position and an inwardly collapsed position" with "each of the second pair of opposed walls releasably attached to an adjacent one of the first pair of opposed walls."

In contrast, this feature of Applicant's invention is neither disclosed nor suggested by Fordon. Fordon discloses frames 9, 13 having corner uprights 11, 14 on which straps 22 are mounted (*see* Fordon, FIGS. 1-2). Due to straps 22, Fordon's frames 9, 13 cannot be moved to an inwardly collapsed position as disclosed and claimed by Applicant. Furthermore, frames 9, 13 are not releasably attached to an adjacent frame, but rather frames 9, 13 always remain attached to each other by straps 22. Therefore, Applicant believes that claim 1 is patentably distinguishable over Fordon, and reconsideration and withdrawal of the rejection of claim 1 and corresponding dependent claims 2-9 is respectfully requested.

With reference to claim 33, Applicant respectfully traverses the Examiner's rejection thereof under 35 U.S.C. § 102(b) over Fordon. In claim 33, Applicant positively recites "an inner receptacle of unitary construction which is arranged to hold merchandise therein, wherein the inner receptacle is removably received within the compartment area."

Such an inner receptacle is neither disclosed or suggested by Fordon, wherein Fordon only discloses separate side wall panels 29, end wall panels 31, and bottom 30 that can be received within frames 9, 13. Importantly, Fordon's panels 29, 31 must necessarily be separable since panels 29, 31 remain affixed to their respective side and end wall frames 9, 13 when the frames 9, 13 are rotated outwardly for nesting of like containers (*see* Fordon, FIGS. 5 and 6). Accordingly, Applicant believes that claim 33 is patentably distinguishable over Fordon, and respectfully requests reconsideration and withdrawal of the rejection of claim 33 and corresponding dependent claims 34-35 under 35 U.S.C. § 102(b).

Turning now to claim 14, Applicant also respectfully traverses the rejection of this claim under 35 U.S.C. § 102(b) over Fordon. Claim 14 recites "a second pair of opposed walls integrally formed with and extending upwardly from the peripheral frame portion *and* integrally formed with the first pair of opposed walls" (*see* FIGS. 21-24; emphasis added). Conversely, the side and end frame members of Fordon's container are not integrally formed, but rather are connected by straps 22 so as to be outwardly rotatable as described above. Therefore, claim 14 is believed to be patentably distinguishable over Fordon, and Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim and its corresponding dependent claims under 35 U.S.C. § 102(b).

Lastly, with reference to claim 18, it should be noted that the Examiner had previously indicated claims 18-23 to be allowable over the cited art (*see* Advisory Action dated September 12, 2002). However, to the extent that the rejection over Fordon still stands, Applicant respectfully traverses this rejection since Fordon does not disclose or suggest "a base member adapted to be received on the peripheral frame portion for supporting a lower portion of the inner receptacle, the base member including an exterior ring and a lightweight support material affixed thereacross." Therefore, claim 18 is believed to be patentably distinguishable over Fordon, and Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim and corresponding dependent claims 19-23.

**Rejection of Claims 10-13, 24-33, and 40-48**  
**Under 35 U.S.C. § 103(a) over Fordon in view of Overholt**

Claims 10-13, 24-33 (*now claims 23-32*), and 40-48 (*now claims 39-49*) have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fordon in view of U.S. Patent No. 6,015,056 issued to Overholt et al. ("Overholt"). In response, Applicant has amended independent claim 24 to recite that the container includes "a first pair of opposed walls pivotably attached to the peripheral frame portion and movable between an assembled position and an inwardly collapsed position, each of the first pair of opposed walls having a flange depending inwardly therefrom" and "a second pair of opposed walls pivotably attached to the peripheral frame portion and movable between an assembled position and an inwardly collapsed position, each of the second pair of opposed walls releasably attached to the flange of an adjacent one of the first pair of opposed walls in the assembled position." Support for this amendment can be found at p. 13, lines 1-14 of the specification and in FIGS. 8-10.

The Examiner asserts that it would have been obvious to have employed the collapsible teaching set forth in Overholt in the device of Fordon (Office Action, p. 3). Applicant respectfully disagrees. As explained above with reference to claim 1, Fordon neither discloses nor suggests walls which are movable to an inwardly collapsed position, nor walls which are releasably attached to each other. In fact, Fordon teaches away from this feature of Applicant's invention, as straps 22 are necessary to limit the outward swing of frames 9, 13 such that Fordon's container can support an upper like container therein in a nested configuration (*see* Fordon, col. 2, lines 47-51; FIG. 6). If straps 22 were removed, the intended nesting function of Fordon's container would be destroyed. Furthermore, Fordon does not disclose or suggest an inwardly depending flange provided on one pair of opposed walls with the second pair of opposed walls releasably attached to the flange of an adjacent wall. The use of such a flange on Fordon's container would also prohibit the nesting ability of the container, as the end frames 13 of the upper container would no longer abut the end frames 13 of the lower container (*see* Fordon, FIG. 6) if inwardly depending flanges were present on the lower container.

For these reasons, there is no motivation or suggestion to combine Fordon and Overholt, and these references cannot be properly combined to achieve Applicant's claimed invention. Accordingly, claim 24 is believed to be patentably distinguishable over this combination, and Applicant respectfully requests that the rejection of claim 24 and its corresponding dependent claims under 35 U.S.C. § 103(a) be withdrawn.

Claims 10-13 depend from and contain all the limitations of independent claim 1. Claim 23 depends from and contains all the limitations of independent claim 18. Claims 39-49 depend from and contain all the limitations of independent claim 33. For the reasons stated above, claims 1, 18, and 33 are all believed to be patentably distinguishable over Fordon, either alone or in combination with Overholt. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 10-13, 23, and 39-49 under 35 U.S.C. § 103(a).

#### **Rejection of Claim 14**

##### **Under 35 U.S.C. § 102(b) Over Cloyd**

Claim 14 has been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,973,692 issued to Cloyd ("Cloyd"). Applicant respectfully traverses this rejection. Claim 14 recites "a base including a peripheral frame portion" and "a second pair of opposed walls integrally formed with and extending upwardly from the peripheral frame portion *and* integrally formed with the first pair of opposed walls" (*see* FIGS. 21-24; emphasis added). First, Cloyd does not disclose or suggest a base having a peripheral frame portion. Furthermore, Cloyd discloses container walls 2, 3, 4, 5 which are hinged with the bottom wall 1, but does not disclose or suggest walls that are integrally formed with each other as disclosed and claimed by Applicant. Accordingly, claim 14 is believed to be patentably distinguishable over Cloyd, and Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim under 35 U.S.C. § 102(b).

**Rejection of Claim 15**

**Under 35 U.S.C. § 103(a) Over Cloyd and Sanders**

Claim 15 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Cloyd in view of U.S. Patent No. 3,796,341 issued to Sanders et al. ("Sanders"). Claim 15 depends from and contains all the limitations of independent claim 14 which, for the reasons stated above, is believed to be patentably distinguishable over Cloyd, either alone or in combination with Sanders. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

**Rejection of Claim 16 Under 35 U.S.C. § 103(a)**

**Over Cloyd, Sanders, and Fordon**

Claim 16 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Cloyd in view of Sanders and Fordon. Claim 16 depends from and contains all the limitations of independent claim 14 which, as described above, is believed to be patentably distinguishable over Cloyd, either alone or in combination with Sanders and Fordon. Therefore, reconsideration and withdrawal of this rejection is also respectfully requested.

**Rejection of Claims 37-39**

**Under 35 U.S.C. § 103(a) over Fordon**

Claims 37-39 (*now claims 36-38*) have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fordon. Claims 36-38 depend from and contain all the limitations of independent claim 33 which, for the reasons stated above, is believed to be patentably distinguishable over Fordon. Accordingly, Applicant respectfully requests that the rejection of claims 36-38 under 35 U.S.C. § 103(a) be withdrawn.

### Conclusion

In summary, Applicant believes that the claims, as amended, now meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

A check in the amount of \$410.00 is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978 -- a duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

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